

RD AN No. 4124 (1924-A)
November 21, 2005

TO: Rural Development State Directors
National Office Officials

ATTN: All Rural Housing, Community Facilities and Business Programs Staff
Rural Development Managers
Community Development Managers
Business Program Managers
State Environmental Coordinators

FROM: Russell T. Davis *(Signed by Russell T. Davis)*
Administrator
Rural Housing Service

Peter J. Thomas *(Signed by William F. Hagy III)*
Administrator
Rural Business-Cooperative Service

SUBJECT: Rural Development Compliance with and Implementation of the
Department of Housing and Urban Development Lead-Based Paint (LBP)
Rule

PURPOSE AND INTENDED OUTCOME

This Administrative Notice (AN) provides guidance on Agency compliance in all programs with the Department of Housing and Urban Development's (HUD) final rule entitled "*Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance*" (hereinafter, "LBP Regulation") found in 24 C.F.R. part 35 as revised on June 21, 2004.

-COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN 3838 (1924-A) dated March 26, 2003, which expired on March 31, 2004; RD AN 3862 (1924-A) dated April 29, 2003, which expired on May 31, 2004; and RD AN 3891 (1924-A) dated September 10, 2003, which expired on September 30, 2004.

EXPIRATION DATE:
November 30, 2006

FILING INSTRUCTIONS:
Preceding RD Instruction 1924-A

BACKGROUND

HUD's LBP Regulation identifies who is responsible (e.g., Federal Agency, applicant, owner) for identification of lead-based paint hazards in federally owned residential property and housing receiving Federal assistance, for control of lead hazards, and for notification of occupants about lead hazards.

AGENCY ADOPTED SUBPARTS OF HUD LBP REGULATION

Rural Development has adopted six subparts of the LBP Regulation (see table below). These subparts replace RD Instruction 1924-A, Exhibit H, and take precedence over Rural Development instructions and handbooks concerning lead-based paint. These subparts are applicable to all housing or child-occupied facilities constructed prior to 1978, receiving financial assistance from or being sold by Rural Development.

ADOPTED SUBPARTS OF LBP REGULATION		
Subpart	Title of Subpart	Programs Impacted
A¹	Disclosure of Known LBP Hazards Upon Sale or Lease of Residential Property	502, 514, 515, 516, 538, CF, B&I
B¹	General LBP Requirements and Definitions	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I
C²	Disposition of Residential Property Owned by a Federal Agency Other Than HUD	502, 514, 515, 516, CF, B&I
D²	Project-based Assistance Provided by a Federal Agency Other Than HUD	514, 515, 516, 521, 538, CF, B&I
J²	Rehabilitation (applicable sections)	502, 504, 514, 515, 516, 533, CF, B&I
R¹	Methods and Standards for LBP Hazard Evaluation and Hazard Reduction Activities	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I

- 1. Applies to all residential housing in Rural Development programs built prior to 1978.*
- 2. Requirements for housing receiving financial assistance from or being sold by Rural Development, depending on type and amount of financial assistance, age of structure, rental or owner-occupied.*

Subpart D--"Project-Based Assistance Provided by a Federal Agency Other Than HUD" requires each owner of a Rural Development complex receiving more than \$5,000 annually per project in project based assistance, including rental assistance, to complete a risk assessment in accordance with the schedule established by Rural Development. In the case of MFH properties in inventory, the Agency assumes the owner's responsibilities.

The requirements of Subpart J are based upon the amount of assistance provided and are detailed in the "Implementation Responsibilities." The amount of assistance is inclusive of all Federal sources, including Rural Development.

EXEMPT HOUSING

Subparts B through R of the LBP Regulation do not apply to the following:

- 1) Non-residential property except “*Child Occupied Facilities*”(definition below).
- 2) Housing built after January 1, 1978.
- 3) Multi-family housing dedicated exclusively for occupancy by elderly or persons with disabilities. Exemption does not apply if child less than age 6 resides or is expected to reside in dwelling unit. (Does not apply to Section 504 program).
- 4) Zero-bedroom dwellings (e.g., efficiency apartments, single-room occupancy housing, dormitories, military barracks, etc.).
- 5) Property found free of LBP by a certified LBP inspector or risk assessor.
- 6) Property where all LBP has been removed and clearance issued by a certified inspector or risk assessor.
- 7) Unoccupied housing that will remain vacant until it is demolished.
- 8) Rehabilitation or improvement of a house that does not disturb painted surfaces.

POSSIBLE FUNDING SOURCES FOR COMPLIANCE ACTIVITIES

Properties owned by Rural Development, and accounts in liquidation, are eligible for Program Loan Cost Expense Funds (PLCE). PLCE Funds cannot be used to fund LBP hazard reduction activities for borrowers or loan applicants. The funding of LBP hazard reduction activities is an eligible loan cost for borrowers. In addition, grants may be available to Rural Development borrowers from other Federal, State, local, and private sources. Each State is strongly encouraged to identify sources of funding within its service area and provide this information to applicants and borrowers.

CHILD-OCCUPIED FACILITIES

LBP workers in Rural Development programs (e.g., Business, Community Facilities) providing assistance for child-occupied facilities must comply with EPA (Environmental Protection Agency) LBP training and certification requirements found in 40 CFR part 745, subpart L. A child-occupied facility is defined as a building visited regularly by the same child, 6 years of age or under, on at least 2 different days within any week (Sunday through Saturday), provided that each day’s visit lasts at least 3 hours and combined annual visits total at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

IMPLEMENTATION RESPONSIBILITIES

HOUSING PRESERVATION GRANT (HPG) PROGRAM:

This section provides guidance to Rural Development staff on implementation of Subpart J of the LBP Regulation as it relates to the HPG Program. Subpart J sets out the requirements for the Agency's programs, which provide assistance for housing rehabilitation. This section clarifies the Agency's and the grantee's responsibilities under Subpart J.

Each Rural Development State Office will notify all HPG grantees that the LBP requirements for Rehabilitation contained in the Rural Development adopted subparts of 24 CFR Part 35 apply to all HPG rehabilitation activities. The State Office will also verify if its State has more stringent requirements than the Federal requirements. Where State standards are more stringent, those standards will take precedence. The Agency must ensure and document that the HPG grantees have been notified of the LBP requirements and that they have complied with reporting requirements described in RD Instruction 1944-N, Section 1944.683.

The following table clarifies HPG grantee requirements based on the amount of assistance provided. Documentation for each required action will be maintained by the grantee in the file for each recipient.

Amount of Rehabilitation Assistance	HPG Grantee Requirements:
Is funding for rehabilitation less than or equal to \$5,000 (per dwelling unit, per year)?	<ul style="list-style-type: none"> • Provide LBP Pamphlet to Occupants (Subpart J, Section 35.910) and Subpart B, Section 35.125) • Test Paint on Surface(s) to be Disturbed or Presume LBP (Subpart J, Section 35.930(b)(1)) • Implement Safe Work Practices (Subpart J, Section 35.930(b)(2)) • Repair Disturbed Paint (Subpart J, Section 35.930(b)(2)) • Perform Clearance Test (Subpart J, Section 35.930(b)(3)) • Provide Notice to Occupants of Result (Subpart B, Section 35.125)
Is rehabilitation assistance greater than \$5,000 and less than or equal to \$25,000 (per dwelling unit, per year)?	<ul style="list-style-type: none"> • Provide LBP Pamphlet to Occupants (Subpart J, Section 35.910) and Subpart B, Section 35.125) • Test Paint on Surface(s) to be Disturbed or Presume LBP (Subpart J, Section 35.930(c)(1)) • Conduct Risk Assessment (Subpart J, Section 35.930(c)(2)) • Establish Interim Control (Subpart J, Section 35.930(c)(3)) • Perform a Clearance Examination (Subpart R, Section 35.1330(a)(3)) • Provide Notice to Occupants of Results (Subpart B, Section 35.125)
Is rehabilitation assistance greater than \$25,000 (per dwelling unit, per year)?	<ul style="list-style-type: none"> • Provide LBP Pamphlet to Occupants (Subpart B, Section 35.125 and Subpart J, Section 35.910) • Test Paint on Surface(s) to be Disturbed or Presume LBP (Subpart J, Section 35.930(d)(1)) • Conduct Risk Assessment (Subpart J, Section 35.930(d)(2)) • Abatement of All LBP Hazards Identified (Subpart J, Section 35.930(d)(3)) • Perform a Clearance Examination (Subpart R, Section 35.1340(a)) • Provide Notice to Occupants of Results (Subpart B, Section 35.125)

In leverage situations where other Federal funds are used, the HPG grantee and the other Agency or organization should agree on who will be responsible for implementing the LBP Regulation. The matrix above is provided to assist the grantee with appropriate steps for compliance.

MULTI-FAMILY HOUSING (MFH)

This section provides guidance to Rural Development staff on implementation of Subpart D--"Project-Based Assistance Provided by a Federal Agency Other Than HUD" of the LBP Regulation. This section clarifies project owner's responsibilities for conduct of lead-based paint risk assessments on MFH complexes constructed before 1978, provides a schedule for owner's implementation of interim controls in accordance with the lead-based paint hazards identified in the risk assessment, and clarifies the Agency's responsibilities to monitor compliance with these standards. To be covered by these requirements, the complex must receive more than \$5,000 annually in project-based assistance, which includes rental assistance.

All requirements of Subpart D--"Project-Based Assistance Provided by a Federal Agency Other Than HUD" shall be met.

The owners of all MFH complexes constructed after 1959 and before 1978 that receive more than \$5,000 annually per complex in project based assistance, including rental assistance, were required to complete a risk assessment on or before September 15, 2003. This completion date was consistent with the date established by HUD in the LBP Regulation and delineated in previous ANs. Buildings constructed before 1978 and later remodeled or rehabilitated to serve as housing were also required to comply with these requirements. For MFH complexes constructed before 1960, the owners were required to complete a risk assessment in accordance with Subpart R Section 35.1320 (b) and EPA requirements in 40 CFR 745.227(d) on or before September 15, 2002.

Each State Office shall determine if the owners of those MFH complexes constructed before 1978 have completed a risk assessment on their complex per the above schedule. In cases where the risk assessment and interim controls have not been completed, the owner is to be notified in writing that he/she may be subject to Section 35.96, "Enforcement" and Section 35.170, "Noncompliance with the Requirements of Subparts B through R." Any person who knowingly fails to comply with any provision of these subparts may be subject to criminal penalties or civil monetary penalties noted in Section 35.95.

Each owner shall conduct abatement and/or interim controls in accordance with Subpart R, Sections 35.1325 and 35.1330 to treat the LBP hazards identified in the risk assessment. In cases where the interim controls have not been completed, the owner is to be notified in writing that he/she may be subject to Section 35.96, "Enforcement" and Section 35.170, "Noncompliance with the Requirements of Subparts B through R." Interim controls are considered completed when clearance is achieved in accordance with Subpart R, Section 35.1340. Interim controls shall be completed no later than the following:

1. In all dwelling units, common areas, and the remaining portions of the residential property, interim controls or abatement were required to be completed no later than September 15, 2004 (12 months after completion date for all risk assessments).
2. In units occupied by families with children of less than 6 years of age and in common areas serving those units, interim controls were required to be completed no later than December 15, 2003.

3. Ongoing LBP maintenance and reevaluation activities - Effective immediately after completion of the risk assessment, the owner shall incorporate ongoing LBP maintenance and reevaluation into the regular building operations in accordance with Subpart R, Section 35.1355, unless all LBP has been removed. If the reevaluation identifies new LBP hazards, the owner shall conduct interim controls in accordance with Subpart R, Section 35.1330.
4. Housing for the elderly, or residential properties designated exclusively for persons with disabilities, are not normally subject to the LBP regulation. However, if a child under 6 years of age moves into, resides in or visits a unit for periods of time meeting the definition of a "child occupied facility," then that unit and common areas serving that unit will have a risk assessment conducted within 90 days of occupancy and interim controls completed within 90 days of the risk assessment.

Each owner shall provide notice (per Subpart B, 35.125 and 35.130) to the tenants of the findings of the risk assessment, work performed, and clearance with a copy of notices forwarded to Rural Development.

Rural Development field staff shall identify all MFH complexes constructed before 1978 and 1960 in their area and determine if a risk assessment has been completed. Rural Development field staff will notify the complex owners of the requirements of Subpart D --"Project-Based Assistance Provided by a Federal Agency Other Than HUD." Rural Development field staff shall track and keep records of the completion of all risk assessments by MFH complex owners.

HOUSING

The attached LBP Compliance Key provides a step-by-step tool for identifying actions the Agency, seller, lessor, owner, or agent must take to comply with the adopted subparts of the LBP Regulations. The key will be used by all programs at the start of the loan or grant-making process, except Guaranteed Single Family Housing. A completed copy of the attached LBP Compliance Key, or computer-based version, should be included in each project case file for residential property built prior to January 1978. In those instances where the Agency is the designated party, the Agency will provide a LBP brochure to occupants of homes with LBP issues. Each State Director should appoint a LBP Single Point of Contact (SPOC) to serve as the State level contact for questions on the LBP Regulation and for liaison with the National Office. The SPOC will be responsible for disseminating LBP information within the State. The State Environmental Coordinator is recommended for the responsibility. Please keep Program Support Staff (PSS) informed of any changes to the SPOC. The latest news on LBP compliance will be e-mailed to each designated LBP SPOC.

STATE AND LOCAL LAWS

This AN will not relieve the seller, lessor, owner, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing LBP or LBP hazards. Rural Development assumes no responsibility for ensuring compliance with such State or local requirements, except in the case of REO properties.

LEAD-BASED PAINT INFORMATION SOURCES

The pamphlet, "*Protect Your Family From Lead in Your Home*," is a good source of information on LBP hazards found in the home and is available from the Rural Development Property and Supply Management Division in St. Louis. To request copies, complete Form RD 2024-4, *Requisition for Forms/Supplies/Pamphlets Listed in Rural Development Supply Catalog* (Stock #494 for English, or #494-S for Spanish), and fax to 1-800-336-3604. This pamphlet and sample disclosure forms are available in English and Spanish on HUD's Internet site

<http://www.hud.gov/offices/lead/disclosurerule/index.cfm#forms>.

HUD sponsors an Internet site (<http://www.leadlisting.org>) for locating qualified LBP inspectors, risk assessors, abatement contractors, and renovators trained in lead-safe practices; EPA-recognized lead analysis laboratories; and Lead Training Providers. Agency staff involved with LBP compliance activities are encouraged to take HUD's Internet based "Visual Assessment Training"

<http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>. This training does not qualify Agency staff to perform official LBP determinations.

The Agency provides an automated version of the LBP Compliance Key at http://teamrd.usda.gov/rd/rhs/PSS/Lead_Paint/lead_based_paint_key.htm that can be used to assess documents and detail the requirements of the LBP Regulation, provide definitions and access to the EPA and Rural Development adopted regulation, and record the results of Agency review.

POINTS OF CONTACT

Rural Development staff should work closely with their State LBP SPOC, borrowers, MFH complex owners and HPG grantees to ensure LBP policies and procedures are effectively integrated with loan processing and servicing activities.

Please direct all questions pertaining to this AN and the LBP Regulation to your *State LBP Single Point of Contact*. If further clarification is needed, please contact the National Office Program Support Staff: Eric Bradley, Environmental Specialist, at (202) 205-8242 (email: eric.bradley@wdc.usda.gov); or for MFH and HPG specific issues, Bonnie Edwards-Jackson, Senior Loan Specialist at (202) 690-0759.

Attachment: Lead-Based Paint Compliance Key

LEAD-BASED PAINT COMPLIANCE KEY

Use this key for all Rural Development actions involving residential property or child-occupied facilities (hereinafter collectively, "property"). This key will assist with determining applicability of lead-based paint (LBP) regulations and Agency required compliance actions. This key is only guidance and must be used in conjunction with the LBP Regulation. Maintain a copy of the results from the key in the project case file.

INSTRUCTIONS: Start by answering the eight compliance screening questions in Table I below. If any answer is 'YES,' the LBP Regulation does not apply. If all questions were answered 'NO,' the LBP Regulation applies. If applicable, answer the questions in Table II and take the corresponding action(s). Follow the key until all compliance requirements are identified, or it is determined that the LBP Regulation is not applicable. See the specific LBP Regulation Citation and Funding Sources for details on what each action entails and possible funding sources.

TABLE I. EXEMPTIONS

	Yes	No	
1			Was property built since January 1, 1978, when lead paint was banned for residential use?
2			Is housing exclusively for elderly or people with disabilities? This exemption does not apply if a child less than age 6 resides or is expected to reside in the dwelling unit. (<i>Housing exclusively for elderly applies to 515 elderly projects, not 504 program.</i>)
3			Is property a zero-bedroom dwelling, including efficiency apartments, single-room occupancy housing, or dormitories?
4			Has the property been found to be free of lead-based paint by a certified lead-based paint inspector?
5			For this property, has all lead-based paint been identified and removed, and clearance achieved?
6			Will the unoccupied property remain vacant until it is demolished?
7			Is this non-residential property? (<i>Does not include child-occupied facilities</i>)
8			Rehabilitation that does not disturb a painted surface?

TABLE II. COMPLIANCE REQUIREMENTS

	Question	Response	Action
1	Is residential property or a child-occupied facility involved?	YES	Go to 2 (below)
		NO	STOP , Subparts B through R of the LBP Regulation do not apply .
2	Was property constructed prior to 1/1/78?	YES	Go to 3 (below)
		NO	STOP , Subparts B through R of the LBP Regulation do not apply .

LEAD-BASED PAINT COMPLIANCE KEY

	Question	Response	Action	Subpart	Funding ¹
3.	Is property being bought, sold, or leased?	YES	Go to 3a		
		NO	Go to 4 (page A-3)		
3a	Is property real estate owned (REO) by Agency?	YES	Go to 3b		
		NO	Agency Must: a. Ensure disclosure documents are in file..... b. Go to 4 (page A-3)	B , Section 35.175	
			Seller or Lessor Must: a. Disclose known information on LBP to buyer or renter(s)..... b. Provide LBP Pamphlet c. Go to 4 (page A-3)	A , Section 35.88(a)(2-4) A , Section 35.88(a)(1)	
3b.	Was REO property constructed between 1/1/60 and 12/31/77?	YES	Agency Must: a. Conduct LBP Inspection ⁽²⁾ b. Conduct Risk Assessment..... c. Provide Notice to prospective purchasers of results.... d. Go to 4 (page A-3)	C , Section 35.215 C , Section 35.215 C , Section 35.215 A , Section 35.88(a)(4)	a, b a, b a, b a, b
		NO	Agency Must: a. Conduct LBP Inspection ⁽²⁾ b. Conduct Risk Assessment..... c. Conduct Abatement of LBP Hazard..... d. Conduct a Clearance Examination..... e. Provide Notice to Occupants of Results..... f. Go to 4 (page A-3)	C , Section 35.210(a) C , Section 35.210(a) C , Section 35.210(b) C , Section 35.210(b) A , Section 35.88(a)(4)	a, b a, b a, b a, b a, b

1. Possible Source of Funding

a. Program Loan Cost Expense Funds

b. Agency Program Funds

c. Other Federal, State, and Local Grants

d. Private Funds

2. Or presume paint has lead content

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LEAD-BASED PAINT COMPLIANCE KEY

	Question	Response	Action	Subpart	Funding ¹
4.	Is funding for rehabilitation being provided?	YES	Go to 4a (below)		
		NO	Go to 5 (page A-4)		
4a	Is funding for rehabilitation less than or equal to \$5,000 (per dwelling unit, per year)?	YES	Agency Must Ensure/Document Owner or Grantee:... a. Provides LBP Pamphlet to Occupants..... b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Uses Safe Work Practices (see Table III, page A-4)... d. Repairs Disturbed Paint (see Table III, page A-4).... e. Performs Clearance Test (see Table III, page A-4)... f. Provides Notice to Occupants of Result..... g. Go to 5 (page A-4)	B , Section 35.175 J , Section 35.910(b) J , Section 35.930(b)(1) R , Section 35.1350 J , Section 35.930 (b)(2) J , Section 35.930(b)(3) B , Section 35.125(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
		NO	Go to 4b (below)		
4b	Is rehabilitation assistance greater than \$5,000 and less than or equal to \$25,000 (per dwelling unit, per year)?	YES	Agency Must Ensure/Document Owner or Grantee:... a. Provides LBP Pamphlet to Occupants..... b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Conducts Risk Assessment..... d. Establishes Interim Control..... e. Performs a Clearance Examination..... f. Provides Notice to Occupants of Results..... g. Go to 5 (page A-4)	B , Section 35.175 J , Section 35.910(b) J , Section 35.930(c)(1) J , Section 35.930(c)(2) J , Section 35.930(c)(3) R , Section 35.1330(a)(3) B , Section 35.125(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
		NO	Agency Must Ensure/Document Owner or Grantee:... a. Provides LBP Pamphlet to Occupants..... b. Tests Paint on Surface(s) to be Disturbed ⁽²⁾ c. Conducts Risk Assessment..... d. Performs abatement of all LBP hazards identified.... e. Performs a Clearance Examination..... f. Provides Notice to Occupants of Results..... g. Provides Ongoing LBP Maintenance..... h. Go to 5 (page A-4)	B , Section 35.175 J , Section 35.910(b) J , Section 35.930(c)(1) J , Section 35.930(d)(2) J , Section 35.930(d)(3) R , Section 35.1335(f) B , Section 35.125(a) R , Section 35.1355(a)/(b)	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d

1. Possible Source of Funding

a. Program Loan Cost Expense Funds

b. Agency Program Funds

c. Other Federal, State, and Local Grants

d. Private Funds

2. Or presume paint has lead content

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LEAD-BASED PAINT COMPLIANCE KEY

	Question	Response	Action	Subpart	Funding ¹
5	Is project-based rental assistance and/or interest credit equal to or greater than \$5,000 annually, per project?	YES	Agency Must Ensure/Document Owner or Landlord:. a. Provides LBP Pamphlet to Occupants..... b. Conducts Risk Assessment..... c. Establishes Interim Controls..... d. Conducts a Clearance Examination..... e. Provides Notice of Results to Occupants..... f. Takes Immediate Response to a Child under 6 years of age with an Environmental Intervention Blood Lead Level..... - <i>Risk Assessment</i> - <i>Interim Controls</i> - <i>Clearance</i>	B , Section 35.125 D , Section 35.310(b) D , Section 35.315 D , Section 35.320 R , Section 35.1330 R , Section 35.1330(a)(3) B , Section 35.310(a) D , Section 35.325	a, b b, c, d b, c, d b, c, d b, c, d b, c, d b, c, d
		NO	COMPLETE THE REQUIRED ACTIONS FROM EACH SECTION		

INSTRUCTIONS: Answer the following three questions to determine if Safe Work Practices apply to the rehabilitation. If any answer is 'YES,' 'Safe Work Practices' and 'Clearance' are not applicable to that portion of the proposed rehabilitation. Document results in case file.

TABLE III. SAFE WORK PRACTICE AND CLEARANCE SCREENING

	Yes	No	
1			Exterior Surfaces - Will maintenance or hazard reduction activity disturb painted surfaces that total less than 20 square feet (2 square meters)?
2			Interior Surfaces - Will maintenance or hazard reduction activity disturb painted surfaces that total less than 2 square feet (0.2 square meters)?
3			Component (e.g., door jam, windowsill) - Will maintenance on a painted surface disturb 10 percent or less of the total surface area on an exterior or interior type of component?

1. Possible Source of Funding

a. Program Loan Cost Expense Funds

b. Agency Program Funds

c. Other Federal, State, and Local Grants

d. Private Funds

2. Or presume paint has lead content

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